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## Chapter 1 – Equal Employment Opportunity and Hiring

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### Section I Equal Employment Opportunity

#### Purpose

The purpose of the Equal Employment Opportunity policy (“EEO policy”) is to ensure that all aspects of employment are conducted without regard to race, color, religion, gender, age, national origin, disability, marital status, pregnancy, or political affiliation.

The EEO policy is designed not only to comply with federal and state laws prohibiting discrimination in employment, but to promote and maintain fairness in the LDSS’ hiring and employment practices and the workplace as a whole. The EEO policy encourages affirmative efforts to recruit qualified candidates of every race, color, religion, age, gender, national origin, disability, or marital or pregnancy status, in order to ensure that all people have fair opportunities in employment based solely on their ability.

The EEO policy does not require, and in fact, prohibits, the hiring, promoting, or in any way advancing anyone on these factors, the use of quotas for any group, or any effort to favor one group over another.

#### Scope

This policy applies to all employees, applicants for employment, and contract employees (hereafter “Employee”).

#### A. Definitions

##### 1. Discrimination

Discrimination on the basis of race, color, religion, gender, age, national origin, disability, marital or pregnancy status, as a basis for taking an employment action, whether such acts are intended or have the effect of, is prohibited.

##### 2. Harassment

Verbal, written, or physical conduct that either denigrates or shows hostility towards a person on the basis of that person’s race, color, national origin, age, sex, religion, disability, marital status or pregnancy that:

- a. has the purpose or effect of creating an intimidating, hostile, or offensive work environment;

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- b. has the purpose or effect of unreasonably interfering with an employee's work performance; or
- c. adversely affects an employee's employment opportunities or compensation.

### 3. Retaliation

Overt or covert adverse employment actions such as reprisal, interference, restraint, discrimination, intimidation, or harassment against an individual who has exercised rights under this policy or opposed actions prohibited under this policy.

### 4. Sexual Harassment

Any unwelcome sexual advance, request for sexual favors, or verbal, written or physical conduct of a sexual nature by a manager, supervisor, co-worker or non-employee (third party). Sexual harassment includes the giving or withholding a work-related benefit in exchange for sexual favors, e.g., when subjecting an employee to unwelcomed and severe or pervasive sexual comments, innuendoes, touching, or other conduct of a sexual nature which creates an intimidating or offensive place for employees to work.

## **B. Prohibited Acts**

- 1. Discriminatory employment action against an employee on the basis of race or gender, color, national origin, religion, age, disability or marital or pregnancy status.
- 2. Harassment of any employee on the basis of race, color, national origin, age, gender, religion, disability or marital or pregnancy status is prohibited. Any employee who perceives the conduct of co-workers, supervisors, visitors, contractors, customers, and others to be harassing should immediately inform the individual(s) that their conduct is unwelcomed and report the conduct to the supervisor or through the complaint procedure.
- 3. Retaliation against an employee for making a complaint of discrimination, harassment, or retaliation and opposing a discriminatory or harassing practice.

## **C. Employment Practices Covered**

This policy applies to adverse actions relating to all aspects of the employment relationship.

- 1. Hiring, demotion, promotion, layoff, and termination;
- 2. Performance management and employee development;

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3. Disciplinary actions;
4. Compensation; and
5. Working environment.

### **D. Harassment**

Harassment of an employee on the basis of his or her race, color, religion, age, gender, national origin, marital or pregnancy status, or disability will not be tolerated. Harassment can consist of verbal or non-verbal expressions or gestures as well as acts of a physical nature. Jokes, innuendoes, inclusions or exclusions in activities, comments and other acts that are not inclusive or make the workplace hostile to an employee based on his or her race, color, religion, age, gender, national origin, marital or pregnancy status, or disability fall within this type of prohibited activity.

### **E. Sexual Harassment**

1. Sexual harassment is unwanted advances, requests for favors, or other verbal or physical conduct of a sexual nature when:
  - a. submission to such conduct is made either explicitly or implicitly as a term or condition of employment;
  - b. submission to, or rejection of, such conduct is used as the basis for decisions affecting the individual; or
  - c. such conduct has the purpose or effect of unreasonably interfering with the individual's work, performance, or full participation in the benefits of employment, or creating an intimidating, hostile, or offensive environment for work.
2. Sexual harassment may take many forms and includes:
  - a. physical assault;
  - b. subtle or overt pressure or direct requests for sexual favors;
  - c. inappropriate display of sexually suggestive objects or pictures; and
  - d. a pattern of unwelcomed and unwanted conduct that would be offensive to a reasonable person including:
    - (1) unnecessary touching;
    - (2) using sexually abusive language or gestures (including remarks about a person's clothing, body or body movements, or sexual activities); and

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(3) teasing and joking of a sexual nature.

### **F. Accommodations for Individuals with Disabilities**

1. The LDSS is committed to providing equal employment opportunities to qualified individuals with disabilities who are otherwise able to perform the essential functions of a job with or without accommodation.
2. Position descriptions will set forth which functions are essential so as not to deny employment opportunities to individuals with disabilities.
3. An individual is considered to have a disability if that individual either:
  - a. has a physical or mental impairment which substantially limits one or more of his or her major life activities,
  - b. has a record of such an impairment, or
  - c. is regarded as having such an impairment.
4. Reasonable accommodations will be provided to a qualified employee or applicant with a disability when a request for an accommodation is made.
  - a. A qualified employee or applicant is one who is able to perform essential functions of the job with or without accommodation.
  - b. A request for an accommodation will be denied if the accommodation is not shown to be effective or if it places an undue burden on the LDSS, or if the employee poses a direct threat to the health and safety of himself or herself or others.

### **G. Complaints Regarding Violations**

#### **1. LDSS Complaint Process**

Complaints of discrimination, harassment or retaliation should be brought to the attention of the Human Resources/EEO Officer or the Director. The report should be made in person; however, a report will also be accepted in whatever other format it is requested. If the person allegedly committing the discriminatory, harassing, or retaliating act is the Human Resources/EEO Officer or the Director, the employee may bring the complaint to the Chair of the Board.

Charges will be promptly and thoroughly investigated and corrective actions taken if the charge is founded. If it is determined that a violation has occurred, appropriate

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relief for the employee bringing the complaint and appropriate disciplinary action, up to and including discharge, against the person(s) who violated this policy will follow.

A non-employee who subjects an employee to harassment in the workplace will be informed of the LDSS policy and appropriate actions will be taken.

In all cases, the LDSS will make follow-up inquiries to ensure that the prohibited conduct has not resumed.

An employee accused of violating the EEO Policy will be fully informed of the allegations and will be able to offer an explanation or defense to the charges. An employee found to be violating this policy will be subject to disciplinary action, including termination.

### **2. External Complaint Process**

- a. Division of Human Resources Management (DHRM) in the Department of Social Services has an EEO complaint investigation procedure that may be used.
- b. Virginia Commission on Human Rights and the U.S. Equal Employment Opportunity Commission also investigate complaints of discrimination.

### **H. Affirmative Action**

As a recipient of federal funds, each LDSS must meet the affirmative action requirements of federal law. The reporting and monitoring actions that must be taken are set forth in the Director's Manual.

In order to ensure that the objectives of this policy are fulfilled, each LDSS will monitor and report its employment practices in a format prescribed by the Virginia Department of Social Services.

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### Section II Types of Positions and Employment Status

#### Purpose

The purpose of this policy is to identify the different types of positions and categories of employment and the terms and conditions of each.

#### Scope

This policy applies to all employees.

#### A. Types of Positions

Each of the following categories may apply to positions that are either full-time or part-time.

1. Permanent Position

A permanent position has an indefinite duration with no expiration date. Depending upon circumstances, the permanent position may be filled by an employee whose status is probationary, regular, temporary, or emergency.

2. Restricted Position

A restricted position is set up for a specific time period. Due to funding or other requirements, the position is set to expire on a specified date. A restricted position may be filled by an employee whose status is probationary, restricted, temporary, or emergency.

3. Temporary Position

A temporary position is established to meet a special need of the LDSS. The duration of a temporary position typically does not exceed twelve months. Only an employee whose status is temporary or emergency may fill this type of position.

4. Emergency Position

An emergency position may be set up for one year's duration for the purpose of meeting special or immediate needs of the agency. An emergency position may be filled only by an employee whose status is emergency.

5. Seasonal Position

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A seasonal position is continuous with no end date. It may be filled for time periods when there is a need for extra help (for example, when the Fuel Assistance Program is active). A seasonal position may be filled only by an employee with either temporary or emergency status.

### **B. Employment Status**

Each of the following categories may apply to employees who are either full-time (working all of the LDSS workweek) or part-time (working an incremental portion of the LDSS workweek).

#### **1. Probationary Employee**

An employee serving a twelve-month probationary period in a permanent or restricted position obtained through a new, re-employment, transfer-in, or promotional appointment. Probationary employees are hired through a competitive selection process.

#### **2. Regular Employee**

An employee (not otherwise designated as temporary or emergency) occupying a permanent position. A regular employee serves a probationary period before achieving regular status.

#### **3. Restricted Employee**

An employee (not otherwise designated as temporary or emergency) occupying a restricted position. A restricted employee serves a probationary period before achieving restricted status. A restricted employee is hired with the understanding that the employment can be no longer than the stated duration of the position.

#### **4. Temporary Employee**

An employee (not otherwise designated as emergency) occupying a permanent, restricted, temporary, or seasonal position with the understanding that the employment is of limited duration typically no longer than a twelve-month period. Temporary employees are hired through a competitive selection process.

#### **5. Emergency Employee**

An employee occupying a permanent, restricted, temporary, seasonal, or emergency position with the understanding that the employment is of limited duration.

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### C. Terms and Conditions of Employment

This section is intended to summarize some of the terms and conditions that distinguish each employment category. For reliable and current information, specific policies should be reviewed to see the terms and conditions applicable to each category of employee.

#### 1. Probationary Employees

Probationary employees are further addressed in Section IV of this chapter.

#### 2. Regular Employees

##### a. Tenure of Employment

Employees have no guarantee of employment for a particular term and may be terminated in accordance with policy.

##### b. Compensation

Compensation must be within the pay scale to which an employee's position is assigned.

##### c. Benefits

Regular employees are entitled to benefits as addressed in policy. Part-time regular employees must work at least half of the LDSS workweek in order to accrue leave on a proportional basis.

##### d. Grievance Procedure

Regular employees may use the grievance procedure.

#### 3. Restricted Employees

##### a. Tenure of Employment

Restricted employees have no guarantee of employment for a particular term and may be terminated in accordance with policy.

##### b. Compensation

Compensation must be within the pay scale to which an employee's position is assigned.

##### c. Benefits

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Restricted employees are entitled to benefits as addressed in policy unless precluded by the terms and conditions of the individual funding source (grant). Part-time restricted employees must work at least half of the LDSS workweek in order to accrue leave on a proportional basis.

d. **Grievance Procedure**

Restricted employees may use the grievance procedure for all actions except termination due to loss of funding or expiration of grant.

4. **Temporary Employees**

a. **Tenure of Employment**

Temporary employees have no guarantee of employment for a particular term, and may be terminated in accordance with policy.

b. **Compensation**

Compensation must be within the pay scale to which an employee's position is assigned.

c. **Benefits**

Temporary employees are not entitled to benefits.

d. **Grievance Procedure**

Temporary employees are not entitled to use the grievance procedure.

5. **Emergency Employees**

a. **Tenure of Employment**

Emergency employees have no guarantee of employment for a particular term, serve at the pleasure of the appointing authority, and may be terminated from employment at any time.

b. **Compensation**

Compensation must be within the pay scale to which an employee's position is assigned.

c. **Benefits**

Emergency employees are not entitled to benefits.

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d. Grievance Procedure

Emergency employees are not entitled to use the grievance procedure.

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### Section III Background Checks

#### Purpose

The purpose of this policy is to provide procedures that will be used for the administration and use of background, criminal, and driving record checks.

#### Scope

This policy applies to all prospective and current employees and volunteers.

#### A. Use of Background and Record Checks

##### 1. Criminal Record

For each applicant and volunteer, the LDSS may request a state and national criminal record check prior to employment; the criminal background record check may be requested for all employees at any time during the course of employment.

- a. If the criminal record reveals a conviction for, or arrest waiting final disposition of the crimes set forth in § 63.2-1719 of the *Code of Virginia* ("barrier crimes"):
  - (1) A prospective employee or volunteer will not be offered an employment or a volunteer position with the LDSS; or
  - (2) A current employee or volunteer will be terminated from employment or volunteer position with the LDSS if there is a conviction; if there is an arrest waiting final disposition, the employee will be placed on leave without pay and the volunteer will be terminated. For current employees, an exception from termination may be made if the conviction is "old" and the employee has not shown any connection between work performance and the conviction.
- b. If the criminal record reveals a conviction for, or an arrest waiting final disposition, for a crime other than a "barrier crime" that is job related and may impact on the ability to perform the assigned duties:
  - (1) A prospective employee or volunteer may not be offered employment or a volunteer position with the LDSS if the crime is relevant (as to the criminal act, the date which such conviction occurred, the circumstances regarding the criminal conduct, etc.) to the performance of the particular job.

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- (2) An employee or volunteer may be terminated if the crime is relevant (as to the criminal act, the date which such conviction occurred, the circumstances regarding the criminal conduct, etc.) to the performance of the particular job.

### **2. Driving Record**

- a. For each applicant, volunteer, and employee whose position requires a driver's license and/or who transports clients of the LDSS or who drives a motor vehicle as part of the position responsibilities, an LDSS may request a driving record check from the Virginia Department of Motor Vehicles or other state if the individual has resided in that state during the past seven years.
- b. If the driving record reveals the presence of any negative points on the record, the prospective or current employee or volunteer may not be offered a position.

### **3. Central Registry Record**

- a. A record check through the Virginia Department of Social Services' Central Registry will be conducted on each prospective and/or current employee or volunteer for founded complaints of abuse or neglect.
- b. If the record check reveals the presence of a founded complaint of abuse or neglect, the prospective employee or volunteer will not be offered a position with the LDSS.
- c. If the record check reveals a founded complaint of abuse or neglect for any current employee or volunteer, the current employee or volunteer will be terminated from their position with the LDSS.

## **B. Other Background Checks**

### **1. Credit History**

For those positions that involve financial transactions or the disbursement of funds, a credit history records check may be conducted. An employee applying for or holding such a position may be required, at the discretion of the LDSS, to consent to such a records check. If the credit history is such that there is doubt or concern with the ability of the employee to exercise the fiduciary duties and obligations of the position with the highest degree of care or if the bonding agent declines to bond the individual, the applicant may not be hired, or the employee may be terminated.

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### **2. Child Support History**

For those positions which involve child support functions for the LDSS, a child support history records check may be conducted. Employees applying for or holding such positions may be required, at the discretion of the LDSS, to consent to such a records check. If the child support history is such that there is doubt or concern with the ability of the employee to exercise the duties and obligations of the position with the highest degree of care and objectivity, the applicant may not be hired, or the employee may be fired.



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### Section IV Probationary Period

#### Purpose

The purpose of this policy is to set forth the requirements regarding probationary period status.

#### Scope

This policy applies to employees with regular, temporary and restricted status.

#### A. Conditions for Probationary Status

##### 1. Required Probationary Period

The following employees must serve a probationary period:

- a. All new employees.
- b. Employees who are hired from another local LDSS or the Virginia Department of Social Services.
- c. Employees who are re-employed following more than a thirty (30) day break in service.
- d. Employees who accept a promotion or other change in position classification. This does not apply when positions are redefined.

##### 2. Probationary Period

- a. Every employee hired or promoted by a LDSS must serve a twelve-month probationary period. This probationary period may be extended by the LDSS to eighteen months when because of circumstances outside the employee's or the LDSS' control an extension serves the legitimate interest of the LDSS.
- b. The probationary period shall begin on the first day of employment or classification change. Temporary employment does not count in calculating the time period for probation.
- c. The probationary period must be extended for leaves of absence in excess of 14 calendar days. The extension is limited to an amount of time equal to the leave of absence.

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- d. A separation for more than 30 days that is not an approved leave is considered a break in service and a new probationary period must be served.
- e. At the LDSS' option, an employee who has been unable to satisfactorily perform due to circumstances beyond the employee's control or due to a disability may have the probationary period extended for a period no greater than one-half the length of the original probationary period. Any such extension of the probationary period must be mutually agreed to by the employee and the Director prior to the end of the probationary period.

### 3. At-Will Employment

An employee who is on probationary status is employed as an at-will employee and should have no expectation of continued employment beyond the probationary period. During the probationary period an employee can be terminated for any reason with or without notice or cause.

## **B. Rights and Benefits During Probationary Period**

### 1. Grievance Procedure

An employee does not have a right to use the grievance procedure during the period of probationary status.

### 2. Evaluation

- a. It is the expectation that an employee's performance will be continually monitored and appropriate performance coaching provided throughout the probationary period. There is no formal process for such performance coaching.
- b. A formal evaluation of the employee's performance must be completed at the end of the first eleven months of the probationary period. If the evaluation is satisfactory the employee will attain regular status with the LDSS. An unsatisfactory performance evaluation more than likely will result in the termination of the employee.

### 3. Benefits

An employee in probationary status has the same benefits as other employees in non-probationary status. Such benefits may include health plan participation, leave accrual, and retirement.

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### **C. Conclusion of the Probationary Status**

1. An employee must be notified when they move from probationary status to regular status or restricted status.
2. If an employee is to be terminated at the end of the probationary period, the reasons for such removal must be documented.